



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042-8884-02]

RTID 0648-XB675

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; fishery reopening.

SUMMARY: NMFS reopens the General category fishery for four days within the December 2021 General category subquota period. This action is intended to provide a reasonable opportunity to harvest the annual U.S. bluefin tuna (BFT) quota without exceeding it, while maintaining an equitable distribution of fishing opportunities across time periods. This action affects Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective 12:30 a.m., local time, December 20, 2021, through 11:30 p.m., local time, December 23, 2021.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr.,

larry.redd@noaa.gov, 301-427-8503, Nicholas Velseboer, *nicholas.velsboer@noaa.gov*, 978-281-9260, or Thomas Warren, *thomas.warren@noaa.gov*, 978-281-9347.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic

HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The 2021 baseline quota for the General category is 555.7 mt. The General category baseline subquota for the December time period is 28.9 mt. Effective January 1, 2021, NMFS transferred 19.5 mt of BFT quota from the December 2021 subquota time-period to the January through March 2021 subquota time-period resulting in an adjusted subquota of 9.4 mt for the December 2021 time period (85 FR 83832, December 23, 2020). Effective December 1, 2021, NMFS transferred 9.5 mt of Reserve category quota and 20.2 mt of Harpoon category quota to the General category resulting in an adjusted December subquota of 39.1 mt (86 FR 66975, November 24, 2021). NMFS recently adjusted the December General category subquota by adding 15.5 mt of underharvest from the adjusted September and October through November time periods resulting in an adjusted December subquota of 54.6 mt (86 FR 71393, December 16, 2021). In that same action, NMFS projected that the adjusted December 2021 subquota of 54.6 mt would be reached shortly, and accordingly, closed the General category on December 14, 2021.

General Category Reopening

As of December 16, 2021, preliminary landings data indicate that the General category December fishery landed 48.8 mt of the adjusted 54.6 mt subquota before closing, leaving resulting in 5.8 mt ($54.6 \text{ mt} - 48.8 \text{ mt} = 5.8 \text{ mt}$) of quota unused. Under § 635.28(a)(2), NMFS may reopen the fishery if NMFS determines that reasonable

fishing opportunities are available. Based on these landings data, as well as average catch rates and anticipated fishing conditions, NMFS has determined that reopening the General category fishery for four days is appropriate given the amount of unused December subquota. Depending on weather conditions and fish availability, a longer reopening could risk exceeding the unused quota available for the December subquota period. NMFS will need to account for 2021 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that. Thus, this action would allow fishermen to take advantage of the availability of fish on the fishing grounds to the extent consistent with the available amount of quota and other management objectives, while avoiding quota exceedance.

Therefore, the General category fishery will reopen at 12:30 a.m., Monday, December 20, 2021, and close at 11:30 p.m., Thursday, December 23, 2021. The General category daily retention limit during this reopening remains the same as prior to closing: one large medium or giant (*i.e.*, measuring 73 inches (185 cm) curved fork length or greater) BFT per vessel per day/trip. This action applies to Atlantic tunas General category (commercial) permitted vessels and HMS Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT. Retaining, possessing, or landing large medium or giant BFT by persons aboard vessels permitted in the General and HMS Charter/Headboat categories must cease at 11:30 p.m. local time on December 23, 2021. The General category will automatically reopen January 1, 2022, for the January through March 2022 subquota time period.

Fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may catch-and-release and tag and release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1).

For additional information on safe handling, see the “Careful Catch and Release” brochure available at <https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/>.

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS’ ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing hmspermits.noaa.gov, using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Classification

This action is taken pursuant to regulations at 50 CFR part 635, which were issued pursuant to section 304(c) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to reopen the fishery is impracticable and contrary to the public interest. The General category recently closed, but based on the available category subquota, fishery

performance in recent weeks, and the availability of BFT on the fishing grounds, is reopened in this action to allow fishermen to take advantage of availability of fish and of quota. NMFS could not have proposed this action earlier, as it needed to consider and respond to updated data and information about fishery conditions and this year's landings. If NMFS were to offer a public comment period now, after having appropriately considered that data, it would preclude fishermen from harvesting BFT that are legally available. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 17, 2021.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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